

STATE OF MICHIGAN
COURT OF APPEALS

In re S R ASHER, Minor.

UNPUBLISHED

June 18, 2020

No. 350465

Baraga Circuit Court

Family Division

LC No. 2017-001379-NA

Before: TUKEL, P.J., and MARKEY and GADOLA, JJ.

PER CURIAM.

In this termination of parental rights case, respondent-father¹ appeals as of right the trial court’s order terminating his parental rights to the minor child SRA, pursuant to MCL 712A.19b(3)(c)(i) (more than 182 days have passed since original disposition, the conditions that led to the adjudication continue to exist, and parent unable to rectify conditions); (g) (although financially able to do so, parent failed to provide proper care and custody and there is no reasonable expectation parent will be able to provide proper care and custody within a reasonable time); (h) (parent imprisoned without provision for proper care and custody); and (j) (reasonable likelihood child will be harmed if returned to parent). We affirm.

I. BASIC FACTS

In August 2017, the Department of Health and Human Services (DHHS) filed a petition seeking jurisdiction over SRA and her removal from respondent-mother’s care and custody; the petition did not seek to remove SRA from respondent-father’s care and custody because he was incarcerated at the time the petition was filed. In relevant part, the petition alleged (1) an unfit home environment, (2) respondent-father’s abandonment of SRA due to his incarceration, and (3) substance abuse on the part of respondent-mother. Prior to the petition, SRA was voluntarily placed in the care of her maternal grandparents in July 2017. During these proceedings, respondent-father admitted that he and respondent-mother used cocaine, opiates, and oxycodone while they were in a romantic relationship and living together during respondent-mother’s pregnancy with SRA. Respondent-father remained incarcerated from the time of SRA’s birth to

¹ Respondent-mother’s rights also were terminated, but she has not filed an appeal.

when his parental rights were terminated. While incarcerated, respondent-father failed to return parenting assignments and did not comply with or show benefit from his court ordered treatment plan. Consequently, petitioner eventually moved to terminate respondent-father's parental rights. The trial court found statutory grounds for termination of respondent-father's parental rights under MCL 712A.19b(3)(c)(i), (g), (h) and (j) and that termination was in the best interests of SRA. This appeal followed.

II. STATUTORY GROUNDS

Respondent-father argues that the trial court erred by finding statutory grounds to terminate his parental rights under MCL 712A.19b(3)(c)(i), (g), (h) and (j). We disagree.

This Court "reviews for clear error the trial court's factual findings and ultimate determinations on the statutory grounds for termination." *In re White*, 303 Mich App 701, 709-710; 846 NW2d 61 (2014). To be clearly erroneous, a trial court's determination must be more than possibly or probably incorrect. *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011). "A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made." *Id.* In reviewing the trial court's determination, this Court must give due regard to the unique "opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *Id.*, citing MCR 2.613(C).

"Only one statutory ground need be established by clear and convincing evidence to terminate a respondent's parental rights, even if the court erroneously found sufficient evidence under other statutory grounds." *In re Ellis*, 294 Mich App at 33. The trial court found four statutory grounds to terminate respondent father's parental rights, MCL 712A.19b(3)(c)(i), (g), (h) and (j), by clear and convincing evidence.

In relevant part, MCL 712A.19b(3) authorizes a trial court to terminate parental rights if it finds by clear and convincing evidence that any of the following exists:

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The parent, although, in the court's discretion, financially able to do so, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(h) The parent is imprisoned for such a period that the child will be deprived of a normal home for a period exceeding 2 years, and the parent has not provided for the child's proper care and custody, and there is no reasonable expectation that parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

A statutory basis to terminate parental rights under MCL 712A.19b(3)(c)(i) exists "when the conditions that brought the children into foster care continue to exist despite time to make changes and the opportunity to take advantage of a variety of services" *In re White*, 303 Mich App at 710 (alteration in original; citation and quotation marks omitted). The conditions that led to adjudication in this case were (1) an unfit home environment, (2) respondent-father's abandonment of SRA due to his incarceration, and (3) substance abuse on the part of respondent-mother. The trial court found that respondent-father had not made significant progress to resolve these issues. Respondent-father's parental rights were terminated in March 2019, more than 182 days after the trial court's initial February 2018 dispositional order. The record supports the trial court's findings.

When the proceedings began, respondent-father was incarcerated and unable to provide for SRA. At the conclusion of the termination hearing, respondent-father remained incarcerated, still had never met SRA, and remained unable to provide for her. Additionally, while it was substance abuse on the part of respondent-mother that lead to adjudication against her, respondent-father admitted that he used drugs along with respondent-mother while she was pregnant with SRA.

Respondent-father argues that the DHHS made no real effort to provide him with services while incarcerated and, therefore, that he did not have an opportunity to comply with his treatment plan. The record does not support respondent-father's argument. A DHHS foster care worker repeatedly testified that respondent-father was sent packets with parenting assignments which included return postage, and DHHS also ordered that respondent-father participate in substance abuse and mental health counseling through the MDOC. Respondent-father failed to return any of the one hundred forty-seven pages of his parenting assignments, although he claimed the MDOC would not allow him to use the prepaid envelopes and postage with which DHHS provided him. Respondent-father failed to produce any evidence to support this allegation and the record does not establish that he made any alternative attempts, for example to submit documents through his trial counsel, to return the parenting assignments to the DHHS. Additionally, the same DHHS foster care worker testified that defendant did not participate in his service plan because, at least in part, he preferred to be in segregation while in prison. Thus, respondent-father had an opportunity to demonstrate to the trial court that he participated in and benefitted from his treatment plan, but he failed to do so. Furthermore, from the beginning of his initial treatment plan in October 2017, through the termination of his parental rights in March 2019, respondent-father agreed to take part in and successfully complete programs in parenting, substance abuse, and mental health treatment but failed to do so. Consequently, because respondent-father remained

incarcerated at the time of termination and because he failed to benefit from the services offered to him despite being given sufficient time to do so, the trial court committed no error, let alone clear error, in finding statutory grounds to terminate respondent's parental rights under MCL 712A.19b(3)(c)(i). Because we have concluded that at least one statutory ground has been proven by clear and convincing evidence, we need not consider whether the other statutory grounds relied on by the trial court, MCL 712A.19b(3)(g), (h) and (j), also have been proven by clear and convincing evidence. See *In re Ellis*, 294 Mich App at 33.

III. BEST INTERESTS

Respondent-father next argues that the trial court clearly erred in finding that termination of his parental rights was in SRA's best interests. We disagree.

"Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights." *In re Olive/Metts Minors*, 297 Mich App 35, 40-41; 823 NW2d 144 (2012). "[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence." *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). The trial court's ruling regarding best-interests are reviewed for clear error. *In re Schadler*, 315 Mich App 406, 408; 890 NW2d 676 (2016). "A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made." *In re Ellis*, 294 Mich App at 33. Finally, "[t]his Court gives effect to the Legislature's intent as expressed in the statute's terms, giving the words of the statute their plain and ordinary meaning. When the language poses no ambiguity, this Court need not look beyond the statute or construe the statute, but need only enforce the statute as written." *In re LE*, 278 Mich App 1, 22-23; 747 NW2d 883 (2008) (citations and quotation marks omitted).

"The trial court should weigh all the evidence available to determine the children's best interests." *In re White*, 303 Mich App at 713. In considering the child's best interests, the trial court's focus must be on the child and not the parent. *In re Moss*, 301 Mich App at 87. "In deciding whether termination is in the child's best interests, the court may consider the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts Minors*, 297 Mich App at 41-42 (citations omitted). "The trial court may also consider a parent's history of domestic violence, the parent's compliance with his or her case service plan, the parent's visitation history with the child, the children's well-being while in care, and the possibility of adoption." *In re White*, 303 Mich App at 714. When the trial court makes its best interests-determination, it may rely upon evidence in the entire record, including the evidence establishing the statutory grounds for termination. *In re Trejo*, 462 Mich 341, 353-354; 612 NW2d 407 (2000), superseded by statute on other grounds as recognized in *In re Moss*, 301 Mich App at 83.

Furthermore, "[a] child's placement with relatives is a factor that the trial court is required to consider" when making its best-interests determination, *In re Gonzales/Martinez*, 310 Mich App 426, 434; 871 NW2d 868 (2015), and "a child's placement with relatives weighs against termination." *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010). "Relative" is defined by MCL 712A.13a(1)(j) as

an individual who is at least 18 years of age and related to the child by blood, marriage, or adoption, as grandparent, great-grandparent, great-great-grandparent, aunt or uncle, great-aunt or great-uncle, great-great-aunt or great-great-uncle, sibling, stepsibling, nephew or niece, first cousin or first cousin once removed, and the spouse of any of the above, even after the marriage has ended by death or divorce.

Thus, a child's biological parent is not that child's "relative" for purposes of the statute, but a child's grandparent or first cousin is his or her relative. See MCL 712A.13a(1)(j); *In re Schadler*, 315 Mich App at 413.

When making a best-interests determination, trial courts may additionally consider whether a child was doing well in placement outside of the respondent's home, *In re White*, 303 Mich App at 714, and how a child's current home compares with the parent's home, *In re Olive/Metts*, 297 Mich App at 41-42. While SRA's placement was with relatives, her maternal grandparents, the trial court nevertheless found that termination was in the best interests of the child. The record establishes that SRA thrived in the placement with her maternal grandparents since she began residing with them. The trial court noted, however, that while SRA's maternal grandparents will "always have a great relationship" with SRA and their home provides SRA with stability, SRA's placement with her maternal grandparents did not provide her the permanency, stability, and finality she required. The trial court also found that a bond "doesn't exist" between SRA and respondent-father. Due to his incarceration, respondent-father has never even met SRA. Thus, the trial court considered SRA's placement with her relatives and determined that even though her placement weighed against termination, it was still in her best interest to terminate respondent-father's parental rights.

In determining a child's best interests, the trial court also may consider the length of time a child was in care, compliance with the DHHS case service plan, and the likelihood that the child could be returned to the parent's home within the foreseeable future. *In re Payne/Pumphrey/Fortson*, 311 Mich App 49, 64; 874 NW2d 205 (2015). A court may also consider a parent's parenting skills, and a child's need for permanency, stability, and finality. *In re Olive/Metts*, 297 Mich App at 41-42. At the time of the termination hearing, SRA had spent nearly her entire life in foster care and had never met respondent-father. During the pendency of this case, respondent-father was incarcerated, failed to complete parenting assignments, and made no effort to adhere to a treatment plan. Respondent-father made no effort to show the trial court that he could provide stability, safety, and permanence to SRA. The trial court addressed SRA's need for permanency and noted that "there is no proposed custodial home" from respondent-father.

The record supports each of the trial court's findings. As discussed earlier, respondent-father was incarcerated prior to and throughout these proceedings and has never met SRA. While incarcerated, respondent-father was provided with numerous opportunities to show he was serious about being a parent to SRA, by taking part in treatment programs and completing parenting assignments, but he failed to do so. Respondent-father has no bond with SRA and has shown no proof of being able to develop one, given that he has never met her. Furthermore, while SRA does have stability in the care of her maternal grandparents, such a situation lacks the finality and permanency that a toddler deserves. At the time respondent-father's parental rights were terminated, SRA's maternal grandparents only had temporary custody of her and, therefore, SRA's

living situation could theoretically change at any time. Terminating respondent-father's parental rights allows for SRA to be placed in a permanent home and, therefore, provides her with the finality and permanency lacking throughout her entire life up to the date respondent-father's parental rights were terminated. Because of respondent-father's history of criminality, continued incarceration, and failure to demonstrate any sort of parenting ability as to SRA, termination of his parental right was in SRA's best interests. Thus, the trial court did not clearly err by finding that termination of respondent-father's parental rights was in SRA's best interests.

IV. CONSTITUTIONAL RIGHT TO PARENT CHILD

Respondent-father argues in his statement of questions involved that his constitutional rights as a parent were violated when the trial court terminated his parental rights to SRA. But because respondent-father failed to make any argument or cite to any legal authority supporting this argument, it is abandoned. See *Cheesman v Williams*, 311 Mich App 147, 161; 874 NW2d 385 (2015) ("An appellant may not merely announce a position then leave it to this Court to discover and rationalize the basis for the appellant's claims; nor may an appellant give an issue only cursory treatment with little or no citation of authority.").

V. CONCLUSION

For the reasons stated, the judgment of the trial court is affirmed.

/s/ Jonathan Tukul
/s/ Jane E. Markey
/s/ Michael F. Gadola